



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TBC Corporation
File: B-231472
Date: June 1, 1988

DIGEST

Filing of a protest with the General Services Administration Board of Contract Appeals that it not within the Board's jurisdiction does not toll time for filing with the General Accounting Office.

DECISION

TBC Corporation protests the award of a contract for tape drives and associated equipment under request for proposals (RFP) No. F04699-87-R-0037 issued by the Sacramento Air Logistics Center, Department of the Air Force.

We dismiss the protest.

TBC received a notice on April 22, 1988 that the Air Force had made award to another offeror. The Air Force stated in that letter and in an April 26 debriefing that TBC's offer of refurbished (used) equipment was technically unacceptable because the RFP had required new material only. TBC contends that the RFP did not require new equipment, and that if it did, the requirement was restrictive because only one manufacturer could furnish new equipment.

TBC protested to the General Services Administration Board of Contract Appeals (GSBCA), which dismissed the protest for lack of jurisdiction on May 13. We received TBC's protest on May 18.

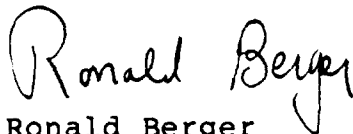
Our Bid Protest Regulations provide that protests based on alleged improprieties apparent on the face of the solicitation must be filed either with the contracting agency or our Office before the closing date for receipt of initial proposals. All other protests must be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. In addition, if a protest had been filed initially with the contracting agency, any subsequent protest here must be filed within 10 days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a) (1988).

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To the extent TBC protests the requirement that only new equipment be offered, as provided in Federal Acquisition Regulation (FAR) § 52.210-5, incorporated by reference in the RFP, the protest should have been filed prior to February 15, the closing date for receipt of proposals. Even if, as TBC argues, the RFP did not require new equipment, TBC knew that the Air Force would accept only new equipment when it received the agency's April 22 letter and had to protest within 10 days thereafter.

TBC did not file a protest with the Air Force. Instead, it filed with the GSBICA. The GSBICA, however, is not the "contracting agency," as that term is used in our regulations, and TBC's filing of its protest initially with the GSBICA does not toll the time for filing with us. Ameritech Industries, Inc., B-229498, Nov. 9, 1987, 87-2 CPD ¶ 469. The protest filed on May 18 is therefore untimely and will not be considered.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel